REMARKS

Claims 2-27 and 29-56 are pending in this application. Claims 7 and 34 were amended solely to explicitly recite an inherent limitation of these claims. Claims 13 and 40 were amended solely to improve their form. Claim 56 was added to further define the present invention. Withdrawal of the outstanding rejections is respectfully requested for at least the reasons set forth below.

No new matter was entered. The new limitations in claims 7 and 34 are inherently part of the recited steps.

Request for Interview Prior to Formal Action on Amendment

Applicants request an interview prior to formal action on this response. An "Applicant Initiated Interview Request Form" accompanies this response. Please contact Applicants' undersigned representative to schedule the interview.

Prior Art Rejections

Claims 2-3, 5-14, 18, 23, 26, 27, 29-30, 32-41, 45, 50, 53-55[1] were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rehkopf in view of Tate.

Claims 4, 15-17, 19-22, 24, 25, 31, 42-44, 46-49, 51 and 52 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rehkopf in view of Tate and further in view of "Office Notice" of certain features.

Claims 13 and 40 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable (i.e., obvious) over Rehkopf in view of Tate and further in view of Easty et al.

Applicants respectfully traverse all of these rejections.

[1] Claims 13 and 40 appear to be erroneously included in this section because these claims are addressed separately in another combination rejection.

1. Rehkopf

In the outstanding Office Action, the Examiner concedes that Rehkopf does not disclose defining a plurality of groups of network configuration settings. The Examiner now relies upon Tate for suggesting this limitation.

Discussion of Rehkopf repeated from previous Office Action responses:

Rehkopf discloses a method for benchmarking and optimizing end-to-end processing performance of a computer network system. The method operates as follows:

a. System performance variables are selected.

b. A baseline performance test is run using an initial set of values for the system performance variables to produce a benchmark system performance.

c. The system performance variables are fixed at the initial set of values.

d. A floating variable is selected from among the system performance variables.

e. Subsequent tests are run with the floating variable set to different values, and system performance indicators that result from each subsequent test are recorded. The system performance indicators are compared to the benchmark system performance. An optimal value of the floating variable is then recorded that optimizes the system performance indicators.

f. Another floating variable is then selected from among remaining system performance variables that have not yet been selected to be the floating variable.

g. Steps (e) and (f) are repeated until all of the system performance variables have been selected as the floating variable.

h. Each of the system performance variables are then fixed to its optimal value.

Rehkopf's method can be characterized as a "brute force" method in that each system performance variable is individually tested while keeping the other system performance variables constant. (The system performance variable being tested during each iteration is the "floating variable.")

Rehkopf's method has at least the following disadvantages:

a. The test process may take a long amount of time because each system performance variable must be individually tested throughout its entire potential range of values. If there are a large number of system performance variables, the test time may be extremely long.

b. After each system performance variable is individually tested, its "optimal value" is determined only in view of the initial values of the other system performance variables (which remain fixed at their initial values during the testing). However, it is very common that certain system performance variables affect other system performance variables. Thus, each system performance variable may actually have a better (i.e., more optimal) value if one or more of the other system performance variables were set to a value other than their initial values. Rehkopf's method has no process for determining the best set of system performance variables.

c. No prior knowledge of previously determined optimal system performance variables is used in Rehkopf. Such knowledge could potentially speed up the testing process by reducing or eliminating the number of system performance variables that would need to be tested, or by reducing the range of values to be tested for the current floating variable.

If the initial set of values (or a subset of the initial set of values) is considered to be equivalent to the claimed group of network configuration settings, at best, Rehkopf discloses defining only one group of network configuration settings. Rehkopf always reverts back to the same initial set of values (i.e., the same group of network configuration settings) every time that the floating variable is changed. Thus, the concept of defining a plurality of groups of network configuration settings and conducting performance tests on the different groups of defined network configuration settings is completely absent from Rehkopf.

2. Tate

In the outstanding Office Action, the Examiner now relies upon Tate for disclosing the use of multiple network configuration settings, specified in advance and stored in groups. Column 7, lines 30-52 of Tate reads as follows (underlining added for emphasis):

> The present invention enables a user or a user's network administrator to create multiple mobile configurations. A mobile configuration is a set of the preferred settings of all communication-related system parameters for a given network and/or location that can be specified in advance. These preferred settings are categorized and stored in profiles. A user, upon arrival in a particular physical or logical "location" (e.g. hotel, branch office, airport lounge or a different network environment) may execute the mobile configuration manager application of the present invention to examine the list of existing and available mobile configurations.

> FIG. 2 depicts a plurality of mobile configurations 32, 34, and 36 representative of a first WAN, a LAN and a second WAN configuration, respectively. In the present invention, a mobile configuration manager application 30 enables a user to create a mobile configuration or to select between previously created mobile configurations. When selecting a particular mobile configuration, a user may choose to "activate" a particular mobile configuration, i.e., instruct the mobile configuration manager 30 to change all system parameters to the values stored in that particular mobile configuration in order to facilitate the desired connection.

Although Tate discloses groups of network configuration settings (column 11, lines 28-35), the purpose of such configuration (also, referred to as "network configuration profiles") is to allow a user to manually select one configuration profile before establishing a desired connection. That is, a user selects one configuration profile from among the previously created configuration profiles and then uses that configuration profile for the connection session. See, also the following text in claim 1 (column 15, lines 46-58) of Tate that further confirms how Tate operates (underlining and italics added for emphasis):

> storing at least one network configuration profile inputted via the user interface dialog into a data storage location;
>
> configuring the communications device in accordance with the contents of the data storage location, whereby the communications device is thereafter enabled to communicate via the communications network; and
>
> automatically calculating a dialing parameter based upon the contents of the location profile and the dial-up network profile, the dialing parameter ***thereafter*** being used to establish a connection between the communications device and the remote network node via the WAN communications network

In Tate, the user must know which configuration profile is appropriate based on the type of connection to be made (e.g., dial-up, LAN). The user then selects the appropriate configuration profile and then establishes a connection. Thus, the configuration profile is selected before a connection is established.

Nowhere does Tate disclose or suggest automatically conducting performance tests using different configuration profiles or selecting the configuration profile during an established

connection. Nor does Tate disclose or suggest selecting the configuration profile during an established connection.

3. Rehkopf in view of Tate

If the disclosure in Tate was used in Rehkopf as suggested by the Examiner (that is, by modifying Rehkopf to define a plurality of groups of network configuration settings), at best, Rehkopf would initially select one particular group of network configuration settings from a plurality of previously stored network configuration settings before a connection is established, and then after the connection is established, the settings within the selected group would be modified one at a time as disclosed in Rehkopf for performance testing.

Stated another way, at best, all that Tate suggests is that the group of network configuration settings in Rehkopf could be initially selected from a group of different network configuration settings before a connection is established. However, once a connection is established, there would be no further use for the unselected group of network configuration settings.

In contrast to Tate, the presently claimed invention uses different groups of network configuration settings during the established connection so as to identify the optimum group of network configuration settings. Neither Tate nor Rehkopf discloses conducting performance tests on different groups of network configuration settings during an established connection, and thus the combination of Rehkopf and Tate would also lack this claimed functionality.

4. Patentability of independent claims 7 and 34 over Rehkopf in view of Tate

Amended claim 7 reads as follows (underlining added for emphasis):

> 7. A method of optimizing network configuration settings for a user's client machine, the method comprising:
> (a) defining a plurality of groups of network configuration settings;
> (b) establishing a network connection between the client machine and a remote server;
> (c) selecting one of the groups of network configuration settings for the client machine from the defined groups of settings;

> (d) automatically conducting one or more performance tests using the selected network configuration settings during the established network connection;
> (e) repeating steps (c) and (d) for one or more other groups of network configuration settings during the established network connection; and
> (f) automatically adjusting the network configuration settings of the client machine defined in the groups based on the results of the performance tests, wherein the adjusted network configuration settings are settings that optimize the performance of the client machine.

As discussed above, even if Rehkopf was modified as suggested by the Examiner, the resultant modified Rehkopf would still lack at least the above-highlighted limitations in steps (d) and (e).

Furthermore, a base reference cannot be modified if doing so would destroy its intended manner of operation. MPEP 2143.01. The Examiner's proposed modification to Rehkopf would clearly destroy Rehkopf's intended manner of operation and thus is improper. Specifically, the Examiner's proposed modification to Rehkopf would require eliminating Rehkopf's initial set of values and different floating variables, and replacing it with different groups of network configuration settings. Rehkopf's invention concept is summarized in the Abstract which reads as follows (underlining added for emphasis)

> A method for benchmarking and optimizing the end-to-end processing performance of a computer network system that identifies performance variables that affect system performance, runs an initial performance test to establish a baseline value for each performance variable and a baseline performance value for the system, pins all performance variables to their constant baseline values except for one floating variable, incrementally changes the value of the floating variable, conducts a new performance test for each changed value, records the values of the system performance and the associated performance variables in a matrix, restores the floating variable to its baseline value, and repeats the prior steps for a new floating variable. The method proceeds until all performance variables have been tested as the floating variable and the matrix is complete. Using the matrix, a computer system designer can understand the performance variables that most affect system performance and can optimize hardware and software configurations.

This invention concept, including the concept of a "floating variable," is repeated throughout the entire disclosure and claims in Rehkopf. While it theoretically might be possible to use different

groups of network configuration settings and maintain the floating variable concept in Rehkopf, there is no suggestion in either of the applied references regarding how this would be done. Furthermore, such a modification would clearly be an improper hindsight reconstruction of Applicants' invention.

To summarize, Applicants are not asserting that Rehkopf cannot be modified based on disclosures in Tate. Instead, Applicants are asserting that the modifications suggested by Tate would not lead to Applicants' claimed invention. The following table summarizes Applicants' arguments set forth above.

Reference	Before established connection	During established connection
Rehkopf	Select initial set of values for the system performance variables	Run multiple tests with an initial set of values and different floating variables as described above (no groups of network configuration settings or anything equivalent thereto)
Tate	Select a network configuration setting to be used for the connection to be established from a plurality of groups of network configuration settings.	Use network configuration settings in the previously selected group. No performance tests are run. No changes are made to any of the network configuration settings during the connection.
Rehkopf + Tate	Rehkopf could be modified so as to select the initial set of values based on a plurality of different groups of values	Improper combination because there would be no "floating variable" in Rehkopf.

For at least the reasons set forth above, claim 7 is believed to be patentable over Rehkopf in view of Tate. Claim 34 is believed to be patentable over Rehkopf in view of Tate for the same reasons as claim 7.

5. Easty and the combination of Rehkopf, Tate and Easty

Discussion repeated from previous Office Action response:

Easty relates to aggregating past content selections of users so as to configure an endpoint server with content that is most likely to be requested. The scheme in Easty operates as follows:

a. Information received from users are analyzed to generate an "aggregate profile of the endpoint server." The "aggregate profile of the endpoint server" represents the collective characteristics and preferences of a plurality of users served by the endpoint server. For example, the preferences may be defined by the frequency that a particular content item or type of content is requested (column 3, lines 2-4).

b. The central server selects a subset of master contents stored in a central database based on an analysis of the aggregate profile of the endpoint server.

c. The selected subset of the master contents is stored in the endpoint database for distribution to the users.

Using aggregation concepts for content selection queuing is a completely different and non-analogous concept than using aggregation concepts for selecting network configuration settings. That is, Easty is directed to content selection, whereas the present invention is directed to network configuration setting selection. Easty is not directed to the same problem in the art addressed by the present invention, nor is Easty in the same field of endeavor as the present invention. Easty is thus non-analogous prior art and therefore cannot be combined with Rehkopf to provide the missing limitations in Rehkopf related to aggregate test results and the use of such results to receive recommendations for network configuration settings.

6. Patentability of dependent claims 13 and 40 over Rehkopf in view of Tate and Easty

In the outstanding Office Action, the Examiner did not address Applicants' previous arguments for patentability of claims 13 and 40. Accordingly, Applicants repeat the previously presented arguments and request that the Examiner substantively address them in the next Office Action if claims 13 and 40 are rejected again over this combination of references.

Claims 13 and 40 are believed to be allowable because they depend upon respective allowable independent claims 7 and 34, and because they recite additional patentable steps.

Claims 13 and 40 further recite that a remote server stores network configuration settings and aggregates test results associated with other client machines that previously established a network connection with the remote server, and that a user's client machine receives network

configuration setting recommendations from the remote server, based on the network configuration settings and the aggregate test results stored on the remote server. No such limitation is even remotely disclosed or suggested in Rehkopf.

In the outstanding Office Action, the Examiner admits that Rehkopf lacks these limitations and relies upon Easty for such limitations. However, as discussed above, Easty is directed to a completely different invention, and is non-analogous prior art, and thus cannot be combined with Rehkopf to make up for the deficiencies in Rehkopf.

7. Patentability of remaining dependent claims

The remaining dependent claims are believed to be allowable because they depend upon respective allowable independent claims, and because they recite additional patentable steps.

Conclusion

Insofar as the Examiner's rejections were fully addressed, the instant application is in condition for allowance. A Notice of Allowability of all examined claims, and all withdrawn claims depending from the examined claims, is therefore earnestly solicited.

Respectfully submitted,

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